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5 **IN THE SUPREME COURT**
STATE OF ARIZONA

6 REPLY TO COMMENTS REGARDING) Supreme Court No. R-07-0023
7 PETITION FOR RULES OF)
8 PROCEDURE FOR EVICTION)
ACTIONS)
_____)

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10 Pursuant to Rule 28(D)(2) of the Rules of the Supreme Court, the State Bar
11 of Arizona (hereafter referred to as the "State Bar" or the "Bar") replies to the nine
12 responses filed with respect to the proposed Uniform Rules of Procedure for
13 Eviction Actions filed December 12, 2007 (the "Rules" or "RPEA"). The State
14 Bar continues to support the proposed Rules in their entirety, both as a fair and
15 reasoned approach to uniformity, and as a proper exercise of the Court's rule-
16 making authority. The State Bar has the following comments.

17 1. All commentators agreed to the need for the adoption of a set of rules to
18 provide uniformity of practice and procedure in eviction actions. Each asked for
19 the revision of certain rules, although there was no consensus as to which rules
20 should be changed or the nature of the changes required.

1 2. The Rules are a moderate proposal that would create the uniformity all
2 commentators agree is necessary. Although this area of practice engenders strong
3 emotions, the Rules intentionally avoided what the Bar believes to be controversial
4 proposals. Instead, they propose a platform of rules as to which there is a general
5 consensus, leaving controversy to future rule petitions by the various interest
6 groups.

7 3. The Rules were largely the result of more than 30 face-to-face meetings of
8 a drafting committee selected to represent a balanced cross section of Justices of
9 the Peace (who preside over most eviction trials), landlord attorneys, and legal
10 service/tenant attorneys. With one exception, every change suggested by the
11 commentators was the subject of at least several hours of discussion in the drafting
12 committee.

13 4. Although several commentators claim to discern bias in the committee
14 membership, the claim is difficult to understand. The committee was composed of
15 three Justices of the Peace, two landlord attorneys, two legal services/tenant
16 attorneys, a private attorney whose practice does not involve this area of the law, a
17 Constable, an Assistant United States Attorney, the Executive Director of a state
18 agency, a Superior Court Commissioner, and the 2007-2008 President of the State
19 Bar.

1 5. Several comments express concern with regard to possible costs of
2 implementing the Rules. None attempted to quantify those costs. While the Bar
3 agrees that potential costs should certainly be considered, it believes it is essential
4 that the Rules provide fundamental fairness to all litigants in eviction actions.
5 While expenses such as developing new form pleadings and providing defendants
6 with a one page information sheet are important, the Bar believes they are
7 outweighed by their contribution to litigants' understanding of – and consequent
8 ability to meaningfully participate in – these actions.


9 6. Several comments oppose the provision of Rule 5(a)(5), requiring that
10 plaintiffs provide prescribed information about the nature of the proceedings
11 together with their complaint. However, eviction actions proceed quickly,
12 litigants are almost always unrepresented, and there is little time for them to
13 acquaint themselves with the statutes, rules, and often unwritten judicial gloss
14 applicable to their action. Trial normally occurs within three days of service. The
15 Bar believes it essential that litigants confronted with such a great disruption to
16 their lives in such a brief time be provided at least the bare essentials contained in
17 the information sheet for many to have even a minimal ability to participate in the
18 process.

7. Several commentators expressed concern over what they perceived to be a conflict between the proposed Rules and statutory provisions. However, Arizona's law is that this Court determines the procedures to be followed in court proceedings. See, State v. Blazak, 105 Ariz. 216, 218, 462 P.2d 84, 86 (1969) ("[T]he statutory rules accompanying the newly created statutory rights shall be deemed to be rules of court and shall remain in effect as such until modified or suspended by rules promulgated by this Court pursuant to Art. 6, § 5 of the Arizona Constitution.") See also, Pompa v. Superior Court in and for Maricopa County, 187 Ariz. 531, 534, 931 P.2d 431 (App. 1997).

For the foregoing reasons and the reasons set forth in the Bar's December 12, 2007 petition, the Bar urges this Court to adopt the proposed Rules in their entirety.

Dated this 14th day of July, 2008.

State Bar of Arizona


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